



August 14, 1997

Mr. William F. Caton, Acting Secretary  
Federal Communications Commission  
1919 M Street, NW, Room 222  
Washington, DC 20554

Re: Notice of Written *Ex Parte* Communication in CC Docket 97-137

Dear Mr. Caton:

On Thursday, August 14, 1997, the attached letter and exhibits from LCI Counsel, Rocky N. Unruh of Morgenstein & Jubelirer, was sent via facsimile to A. Richard Metzger, Deputy Chief of the Common Carrier Bureau, FCC, concerning the above referenced proceeding. In addition, the following FCC officials received the same letter and exhibits: Thomas Boasberg, Advisor, Office of Chairman Reed Hundt; Kathleen Franco, Advisor, Office of Commissioner Rachelle Chong; James Casserly, Advisor, Office of Commissioner Susan Ness; Paul Gallant, Advisor, Office of Commissioner James H. Quello; Melissa Waksman, Brent Olson, Sarah Whitesell, Jordan Goldstein, and Florence Setzer of the Policy Division of the Common Carrier Bureau; Tom Koutsky of the Office of the General Counsel, Competition Division; and Anu Seam of the Competitive Pricing Division of the Common Carrier Bureau.

Please place a copy of this letter in the public record of the above-referenced proceeding. Thank you.

Sincerely,

A handwritten signature in dark ink, appearing to read "Douglas W. Kinkoph".

Douglas W. Kinkoph  
Director, Regulatory/Legislative Affairs

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# **LCI International<sup>®</sup>**

## **Worldwide Telecommunications**

August 14, 1997

VIA FAX (202) 418-2825

A. Richard Metzger  
Deputy Chief  
Common Carrier Bureau, #500  
Federal Communications Commission  
1919 M St., NW  
Washington, DC 20554

RE: Ameritech's Section 271 Application

Dear Mr. Metzger:

This is to bring you up to date on developments since our July 24, 1997 meeting concerning Ameritech's continued use of its ValueLink contracts to foreclose competition in the local service market in Michigan.

As is explained in more detail in LCI's comments filed June 10 1997 in opposition to Ameritech's application, Ameritech's ValueLink contracts cover intraLATA toll service to business customers in Michigan. The contracts are long-term (one to three years in duration) and have substantial early termination penalties. As one would expect in a non-competitive market, Ameritech has been extremely successful with its ValueLink program -- locking in up to 60% of the available business customers in Michigan to these long-term contracts.<sup>1</sup>

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<sup>1</sup> See Declaration of William Lockwood at ¶ 4 (June 6, 1997), submitted by LCI as part of its comments in opposition to Ameritech's section 271 application. Mr. Lockwood is the president of a company responsible for selling Ameritech's ValueLink program in Michigan for over four years. In its reply papers, Ameritech did not refute Mr. Lockwood's estimate of the percentage of business customers locked into ValueLink contracts. Instead, Ameritech simply argued -- without any support whatsoever -- that it would "expect that a more objective analysis would find the level of 'foreclosure' to be quite small." Reply Affidavit of Theodore A. Edwards at ¶ 136 (July 2, 1997) ("Edward Aff.").

In just five months of reselling local service in Michigan, LCI has received nearly 50 orders from business customers who wish to purchase local service from LCI, but who do not want to terminate their ValueLink contracts with Ameritech because of the substantial termination penalties. To date, Ameritech will not allow LCI to resell only local service to these customers, unless LCI assumes liability to Ameritech for the ValueLink contracts or pays the termination penalties. Given the economics of resale and LCI's status as a new entrant, these conditions are neither reasonable nor acceptable to LCI. Consequently, these orders have been placed on hold, resulting in substantial lost revenue to LCI.

As you know, Brooks Fiber filed a complaint in March, 1997 against Ameritech before the Michigan Public Service Commission challenging Ameritech's refusal to permit business customers to purchase local service from Brooks Fiber but continue to obtain intraLATA toll service from Ameritech under existing ValueLink contracts. MCI intervened in that complaint proceeding. Ameritech recently settled with Brooks Fiber and MCI, although that settlement has not yet been formally approved by the Michigan PSC. In its reply pleadings in support of its section 271 application, Ameritech represented to the Commission that it "is willing and able to work out arrangements with CLECs to allow ValueLink customers to switch local carriers without exiting their ValueLink contracts, as demonstrated by its experience with Brooks Fiber."<sup>2</sup>

Given Ameritech's representation to this Commission, I contacted its Michigan counsel, Craig Anderson, on July 30, 1997. Mr. Anderson agreed that Ameritech would provide the same settlement terms to LCI that had been provided to Brooks Fiber and MCI, which meant that LCI could resell local service to ValueLink customers without having to pay termination penalties or assume liability for those contracts. Mr. Anderson instructed LCI to contact Ameritech's representative, Theodore Edwards (the same Mr. Edwards who submitted the affidavit referenced above), to work out the details of how the settlement would be implemented.<sup>3</sup>

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<sup>2</sup> See Edwards Aff at ¶ 131 (emphasis added). Elsewhere in his affidavit, Mr. Edwards stated that "Ameritech is, of course, willing to work with LCI to develop such solutions [regarding ValueLink] as necessary. *Id.* at ¶ 138.

<sup>3</sup> A copy of my confirming letter to Mr. Anderson, dated July 30, 1997, is attached hereto as Exhibit 1.

Anne Bingaman contacted Mr. Edwards on August 4, 1997, leaving a voice mail message followed by a confirming letter.<sup>4</sup> Ms. Bingaman spoke with Mr. Edwards on August 6, 1997, and wrote a confirming letter of that conversation as well.<sup>5</sup> Contrary to the representations in his affidavit to the Commission, Mr. Edwards advised Ms. Bingaman that Ameritech is not able to allow its ValueLink customers to purchase local service from LCI unless (1) the customer terminates the contract (triggering the termination penalties), or (2) LCI assumes liability for the contracts -- the same unreasonable and unacceptable conditions that Ameritech had been seeking to impose upon LCI for the past five months.

In sum, despite Ameritech's purported settlement with Brooks Fiber and MCI, the situation has not changed since our meeting with you: a substantial portion of Ameritech's local market remains closed to competition, and Ameritech continues to seek to impose unreasonable conditions on LCI's ability to resell local service to business customers in Michigan, in violation of section 251(c)(4)(B).

Thank you for your consideration of these matters.

Very truly yours,



Rocky N. Unruh  
Morgenstein & Jubelirer  
Counsel to LCI International Telecom Corp.

RNU:slg

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<sup>4</sup> A copy of Ms. Bingaman's letter dated August 4, 1997 is attached hereto as Exhibit 2.

<sup>5</sup> A copy of Ms. Bingaman's letter dated August 6, 1997 is attached hereto as Exhibit 3. (So that the Commission has a complete record of the recent correspondence between LCI and Ameritech on this subject, we are also attaching as Exhibit 4 a letter from Mr. Edwards to Ms. Bingaman dated August 7, 1997 and as Exhibit 5 a letter from Ms. Bingaman to Mr. Edwards dated August 11, 1997.)

MORGENSTEIN  
& JUBELIRER LLP

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SAN FRANCISCO, CALIFORNIA 94105

TELEPHONE (415) 896-0666  
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EXHIBIT #1

ORIG: AKG  
cc: Costello  
Hazzard  
FILE  
CITROW

July 30, 1997

Via Facsimile -- 313-496-9326

Mr. Craig A. Anderson  
Counsel  
Ameritech Michigan  
444 Michigan Avenue, Room 1750  
Detroit, MI 48226

Re: *ValueLink*

Dear Craig:

This letter will confirm our telephone conversation today regarding ValueLink issues.

Ameritech agrees to provide LCI with the same settlement terms that it has provided to Brooks Fiber and MCI in resolution of Brooks Fiber's complaint in case No. U-11350. As we discussed, LCI is in a somewhat different position than Brooks Fiber because LCI is currently only reselling local service, whereas Brooks is providing local service over its own facilities. As I understand it, as to LCI's resale business, Ameritech agrees that LCI will be able to resell local service to customers who have existing ValueLink contracts without having to assume those contracts, as Ameritech had previously insisted upon. As to those customers, Ameritech will continue to provide the intraLATA toll service pursuant to the ValueLink contracts, and will separately bill the customer for that service, while LCI will provide the local service only, and bill the customers for that local service based on call record detail LCI obtains from Ameritech.

You indicated that it will take Ameritech some period of time to implement the separate billing arrangements that will enable LCI to resell local service to ValueLink customers. You did not have the details on how long this might take, or what changes, if any, might need to be made in Ameritech's switches to accommodate this separate billing arrangement. Pursuant to your instructions, LCI's Ameritech team will contact Ted Edwards of Ameritech at 312-335-6531 to begin implementing these arrangements. Obviously, LCI would like to see this implemented as soon as possible because until it is resolved, LCI remains foreclosed from reselling local service to ValueLink customers, whom we have discovered comprise a substantial percentage of the business market in Michigan. (As I mentioned to you, LCI already has had to place a number of customer orders on hold because of their ValueLink contracts and Ameritech's insistence, to date, that LCI had to assume those contracts.)

Mr. Craig A. Anderson

July 30, 1997

Page 2

As I understand it, Ameritech's settlement with Brooks Fiber and MCI does not address the foreclosure in the intraLATA toll service market that is brought about by the length of the ValueLink contracts and their substantial termination penalties. Although we did not discuss this in our telephone conversation, please understand that this issue remains of considerable concern to LCI, and that LCI intends to address this issue, if it cannot be otherwise resolved, in an appropriate forum.

It is also my understanding that Ameritech has taken the position before the Michigan PSC that its settlement with Brooks Fiber and MCI only obligates Ameritech to provide intraLATA toll service to customers of MCI or Brooks who have entered (or are willing to enter) into ValueLink contracts with Ameritech. Please be advised that LCI reserves the right to challenge any refusal by Ameritech to provide intraLATA toll service to an LCI local service customer unless that customer first commits to a ValueLink contract.

If I have not accurately set forth the terms of Ameritech's settlement on the ValueLink issues with respect to LCI's resale of local service in Ameritech's region, please advise me in writing.

Thank you for your cooperation on this matter, and I look forward to speaking with you in the future.

Very truly yours,



Rocky N. Unruh

RNU/lgp

cc: Anne K. Bingaman

# **LCI International®**

## **Worldwide Telecommunications**

EXHIBIT #2

Anne K. Singaman  
Senior Vice President  
President, Local  
Telecommunications Division

August 4, 1997

**VIA FAX**

Mr. Ted Edwards  
Vice President  
Sales for Local Exchange Carriers  
Ameritech Information Industry Services  
444 Michigan Ave.  
Detroit, MI 48226

Dear Ted:

This will confirm the voice mail I just left you concerning LCI's urgent request that we be allowed to process local orders without assuming liability for the intraLATA toll contracts of those Ameritech customers. This was agreed to on July 30, 1997 by Craig Anderson, Counsel for Ameritech Michigan in Detroit. A copy of the letter between our lawyer and Mr. Anderson is attached.

Mr. Anderson said that you were the person who has to implement this. We hereby request that this be done immediately. We have 15 (and possibly more) orders on hold, with the number growing weekly of Michigan customers who would like to use LCI for local service. Until July 30, Ameritech had insisted that LCI assume liability for the ValueLink contracts. Craig Anderson has now agreed otherwise.

Will you please let me know immediately the following since this has been hanging fire without any resolution for almost four months now:

1. What has to be done to implement this?
2. Can we enter these orders immediately, meaning today or tomorrow, without assuming liability for the ValueLink contracts?
3. Do switches have to be reconfigured?
4. What exactly will be done and when?

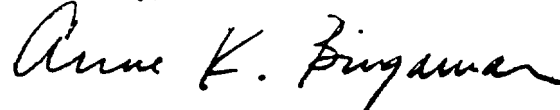
Mr. Ted Edwards  
August 4, 1997  
Page 2  
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Thank you very much. Our operations person whom you should deal with directly on any technical aspects of this is Tracy Strombotne at (614) 798-6037. Tracy's pager number is (888) 503-0251. I can be reached here in McLean anytime.

Please get back to me as soon as possible to let me know if we can process these orders today without assuming liability for these contracts. I also want to know exactly what Ameritech is going to do to resolve this intraLATA toll problem on a going-forward basis.

Thank you.

Sincerely,



Anne K. Bingaman

attachment

AKB:slg

cc: Tracy Strombotne  
Rocky Unruh  
Craig Anderson



**EXHIBIT #3**

August 6, 1997

**VIA FAX**

Mr. Ted Edwards  
Vice President  
Sales for Local Exchange Carriers  
Ameritech Information Industry Services  
350 North Orleans, Floor Three  
Chicago, Illinois 60654

Dear Ted:

This will confirm our telephone conversation of this morning. You stated:

1. Ameritech's ValueLink contracts with termination penalties cover intraLATA toll, but not local services;
2. To my personal knowledge, many of these contracts have 100% termination penalties;
3. LCI today cannot sell its local service in Michigan to an Ameritech ValueLink customer, without also assuming full liability for all termination penalties in the Ameritech ValueLink contract;
4. Ameritech's billing system is driven off the customer's telephone number, which you stated as the reason why the current Ameritech billing system cannot separate the local service from the ValueLink portion of a customer's bill;
5. Ameritech recently settled with Brooks and MCI, for facilities-based local customers, which will allow Brooks and MCI to sell their local service to customers who retain liability to Ameritech for a ValueLink contract;
6. The Brooks/MCI settlement, which was apparently discussed between LCI's lawyer Rocky Unruh and Ameritech's Craig Anderson last week will not work for LCI, because LCI is not yet a facilities-based carrier;

7. Ameritech has not yet developed a way for its billing system to split local services from intraLATA toll for CLECs who are not facilities-based, but are reselling Ameritech local services;
8. You offered LCI the same thing Ameritech has offered for several months, which is that LCI could simply assume the termination liabilities in the ValueLink contract. That is an unacceptable resolution, as we have been telling Ameritech since this was first offered; and
9. Ameritech has done nothing for MCI on the reselling side, and the MCI settlement is only facilities-based.

Craig Anderson is out on vacation this week, and you are going to speak to him when he returns Monday and call me.

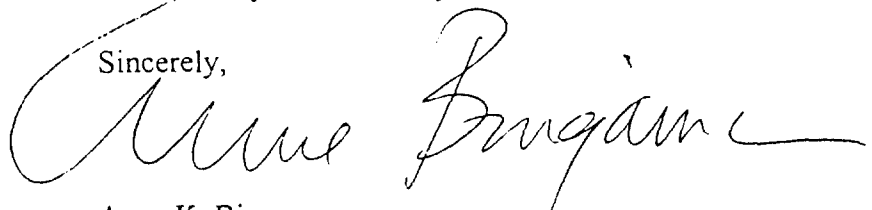
I also asked you to put Ameritech's proposal, if one develops by Monday, in writing so that LCI will finally have a written answer from Ameritech as to what it plans to do to split local services and intraLATA, and exactly when it plans to do that for LCI.

I finally told you that I had determined it will be necessary for LCI to file a complaint in the Michigan PSC next week, in order to finally get this issue resolved.

We have exchanged thirteen letters with Ameritech since March 24, 1997 on this issue, and now have 15 or more customers on hold, unable to provision their service because of the linkage of local service and ValueLink in Ameritech's billing system. I will be happy to file a written settlement with the complaint, but after trying to resolve this with Ameritech since March 24, 1997, the company now has to put our position in a public record, let Ameritech state its position, and if we can settle this portion of our differences in a manner acceptable to us and to you, with a definite timetable for completion and in a forum with jurisdiction to enforce its orders that we can return to if that is not adhered to, that will be acceptable to LCI.

Thank you for your call. I will wait to hear from you on Monday.

Sincerely,

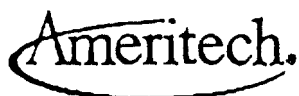


Anne K. Bingaman

AKB:slg

cc: Rocky Unruh

350 North Orleans Street  
Floor 3  
Chicago, IL 60654  
Office 312/335-6531  
Fax 312/467-9026



Theodore A. Edwards  
Vice President - Sales  
Local Exchange Carriers

August 7, 1997

EXHIBIT #4

Anne K. Bingaman  
LCI International  
Senior Vice President  
President, Local Telecommunications Division  
8180 Greensboro Drive  
McLean, Virginia 22102

VIA FAX: 703-610-4878

Dear Anne:

I'm in receipt of your letter that recaps your understanding of our Wednesday, August 6, phone conversation.

One important point that you failed to include was your acknowledgment that the real issue for LCI is not intraLATA toll per se, but ValueLink contracts. You don't have customers looking to split their local and intraLATA services, what you're looking for is a way to avoid any obligations created by customers who have ValueLink contracts with Ameritech.

So that the Michigan PSC has a complete and accurate understanding of the issue, I hope any complaint you file will accurately include this fact.

As always, Ameritech will continue to look for ways to resolve this, and any other issues with LCI in ways that create "Win-Win" business outcomes for both our companies.

A handwritten signature in cursive script, appearing to read "Ted Edwards".

cc: Neil Cox

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14 H  
Anne K. Bingaman  
Senior Vice President  
President, Local  
Telecommunications Division

EXHIBIT #5

August 11, 1997

Mr. Ted Edwards  
Vice President  
Sales for Local Exchange Carriers  
Ameritech Information Industry Services  
350 North Orleans, Floor Three  
Chicago, Illinois 60654

Dear Ted:

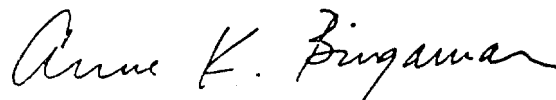
Thank you for responding to my August 6, 1997 letter. Please note that your response seems to misunderstand LCI's service goals.

LCI wants to provide customers with any type of telephone service that they desire, including local exchange service only. LCI's systems are designed to provide customers with any combination of local, intraLATA, and long distance telephone service. LCI's sales force is trained to sell customers any combination of local, intraLATA, and long distance telephone service. Our goal is to maximize customer choice.

Ameritech's intraLATA toll policies adversely affect LCI and potential customers. Ameritech refuses to sell intraLATA toll service to customers that wish to purchase LCI local service only. Ameritech also refuses to let its ValueLink intraLATA toll customers purchase LCI local service without severing their ValueLink contracts and incurring large penalties. These policies severely limit LCI's ability to provide local exchange service, and thereby limit customer choice.

LCI places critical importance on having Ameritech resolve these intraLATA service issues as quickly as possible. Until Ameritech stops tying its local and intraLATA service and agrees to provide intraLATA service separate from local service, LCI will not be able to compete effectively against Ameritech.

Sincerely,



Anne K. Bingaman